



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20461

Katharine R. Boyce, Esq.
Patton Boggs L.L.P.
2550 M St., N.W.
Washington, D.C. 20037

DEC 1 2009

RE: MUR [redacted] 6110
VIDA Fitness
Urban Salons, Inc., d/b/a
Bang Salon Spa
[redacted]

Dear Ms. Boyce:

On November 3 and 10, 2008, the Federal Election Commission (the "Commission") notified your clients, VIDA Fitness, Urban Salons, Inc., d/b/a Bang Salon Spa ("Bang Salon"), [redacted] of complaint [redacted] alleging that your clients violated the Federal Election Campaign Act of 1971, as amended (the "Act") and provided your clients with a copy of the complaints.

After reviewing the allegations contained in the complaint, your clients' responses, and publicly available information, [redacted]

[redacted] the Commission dismissed the allegation that VIDA Fitness and Bang Salon violated 11 C.F.R. § 102.17(c). [redacted]

[redacted] Enclosed are the Factual and Legal Analyses that set forth the basis for the Commission's determination.

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MUR §110 (VIDA Fitness, Bang Salon Spa,
and David von Storch)
Letter to Katharine R. Boyce, Esq.
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In the meantime, this matter will remain confidential in accordance with 2 U.S.C.
§§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish
the matter to be made public. We look forward to your response.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS:

VIDA Fitness

MUR 6110

Urban Salons, Inc., d/b/a Bang Salon Spa

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Robert J. Kabel, on behalf of the District of Columbia Republican Committee. *See* 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

_____ the Obama Victory Fund ("OVF"), a joint fundraising committee of the Democratic National Committee ("DNC") and Obama for America ("OFA"), the principal campaign committee of Barack Obama for his 2008 presidential campaign. The complaint claims that VIDA Fitness and Bang Salon Spa ("Bang Salon") _____ using their email accounts and a common list of their "customers and friends" to email invitations/solicitations to a September 26, 2008 OVF fundraiser that was held at a VIDA Fitness gym. Complaint at 2. _____

_____ Bang Salon is the brand name for Urban Salons, Inc. For the sake of clarity, this entity is herein referred to as "Bang Salon." In view of OVF's status as a joint fundraising committee, the complaint also alleged that the VIDA/Bang Salon emails should have contained a joint fundraising notice pursuant to 11 C.F.R. § 102.17(c). *See id.* at 2-3. The joint response from VIDA Fitness and Bang Salon was submitted by their founder and CEO, David von Storch.

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3 _____ In addition, because von Storch was an
4 OVF fundraising volunteer that drafted the VIDA/Bang email invitation/solicitation without the
5 knowledge or authorization of OVF and its lack of a joint fundraising notice was of limited
6 impact, the Commission dismisses the allegation that VIDA Fitness and Urban Salons, Inc., d/b/a
7 Bang Salon Spa violated 11 C.F.R. § 102.17(c) based on the email solicitations sent by VIDA
8 Fitness and Bang Salon.

9 **III. FACTUAL SUMMARY**

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20 _____ Furthermore, the complaint alleges that in view of OVF's
21 status as a joint fundraising committee, the email solicitations failed to include joint fundraising
22 notices as required by 11 C.F.R. § 102.17(c)(2)(i).

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13 **The email that von Storch sent to the 20,000 recipients on the VIDA/Bang email list**
14 **stated that the cost of attendance was either \$100 for a "Friend," \$250 for a "Supporter," or**
15 **\$2,500 for "Host committee members." See Exhibit B to the Von Storch Declaration (attached**
16 **to the VIDA/Bang Response as Exhibit 1). Those wishing to RSVP were directed to a**
17 **contribution page on OFA's website, <https://donate.barackobama.com/page/contribute/DCSJP>.**
18 **The invitation/solicitation sent by von Storch did not provide any other means of submitting an**
19 **RSVP or making a contribution. According to the VIDA/Bang Response, the second page of**
20 **Exhibit B to the Von Storch Declaration is a copy of the web page to which that link led at the**
21 **time of the VIDA/Bang Fundraiser. See VIDA/Bang Response at 3 and Exhibit B to the Von**
22 **Storch Declaration (attached to the VIDA/Bang Response as Exhibit 1). The contribution**
23 **webpage includes the following disclaimer:**

The first \$2,300 of each contribution from an individual will be allocated to Obama for America and will be considered designated for the general election. The next \$28,500 of each contribution from an individual will be allocated to the Democratic National Committee. Any contributor may designate his or her contribution for a particular participant. (Participants are Obama for America and the DNC). The allocation formula above may change if any contributor makes a contribution that, when allocated, would exceed the amount that the contributor may lawfully give to either participant.

See Exhibit B to the Von Storch Declaration.

The available information indicates that the DNC and OVF did not request or receive the email list itself and von Storch, a volunteer fundraiser, used the VIDA/Bang email list without their prior request, approval or authorization.

IV. ANALYSIS

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B. Joint Fundraising Notices

The invitations and solicitations sent to the 20,000 email addresses on the VIDA/Bang email list included solicitations for contributions to OVF, a joint fundraising committee. Solicitations for joint fundraising activity must include certain information pursuant to 11 C.F.R. § 102.17(c), including the names of all committees participating in the joint fundraising activity, the allocation formula to be used to distribute joint fundraising proceeds, a statement informing contributors that they may designate contributions for a particular participant in the joint fundraising activity notwithstanding the allocation formula, and that the formula may change to avoid the making and receipt of excessive contributions.

Although the email drafted by von Storch did not contain the required joint fundraising notice, the only means of making the contribution solicited in the email was to use the link included in the email.

the web link in the VIDA/Bang email invitation/solicitation directed contributors to a

1 joint OVF-DNC webpage created specifically for the fundraiser where they could make an
2 online contribution that included the required joint fundraising notice.¹

3 The available information indicates that the OVF invitation/solicitation for the fundraiser
4 also included a second page with a complete joint fundraising notice.

5 Under the circumstances, including that David von Storch was an OVF fundraising
6 volunteer who drafted an email soliciting contributions without the knowledge or authorization
7 of OVF, and that a joint fundraising notice was included in both the official OVF
8 invitation/solicitation and the joint OVF-DNC webpage to which the VIDA/Bang unauthorized
9 solicitation directed contributors, the Commission dismisses the allegation that VIDA Fitness
10 and Urban Salons, Inc., d/b/a Bang Salon Spa violated 11 C.F.R. § 102.17(c). *See Heckler v.*
11 *Chaney*, 470 U.S. 821, 831 (1985).

12 **V. CONCLUSION**

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14 The Commission dismisses the
15 allegation that VIDA Fitness and Urban Salons, Inc., d/b/a Bang Salon Spa violated 11 C.F.R.
16 § 102.17(c).

¹ At this time, that link re-directs contributors to <https://donate.bareckobama.com/page/contribute/dnc03main>, which appears to be a page on the OFA website (now part of the DNC) and does not include a joint fundraising notice.